

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONDA L. FACKLAM,
Plaintiff,
v.
CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

Case No. ED CV 15-01973 AFM

**MEMORANDUM OPINION AND
ORDER AFFIRMING DECISION
OF COMMISSIONER**

On March 22, 2012, Plaintiff Ronda L. Facklam applied for Disability Insurance Benefits and Supplemental Security Income. (AR 15, 181, 199.) After her applications were denied initially and upon reconsideration, Plaintiff requested a hearing before an Administrative Law Judge (“ALJ”). A hearing was held on August 13, 2014, at which Plaintiff testified with representation by an attorney. (AR 35-59.) On October 20, 2014, the ALJ issued an unfavorable decision. (AR 15-30.) Plaintiff requested review of the ALJ’s decision by the Appeals Council. (AR 9.) After the Appeals Council declined review (AR 1-6), Plaintiff commenced this action.

In accordance with the Court’s Order Regarding Further Proceedings, Plaintiff filed a memorandum in support of the complaint on July 29, 2016 (“Pl.

1 Mem.”); the Commissioner filed a memorandum in support of her answer on
 2 August 29, 2016 (“Def. Mem.”). No reply was filed. The sole disputed issue in
 3 Plaintiff’s memorandum is whether the ALJ made a proper adverse credibility
 4 determination with respect to Plaintiff’s testimony: “[T]he ALJ’s decision must be
 5 reversed because it lacks the support of substantial evidence and is a result of legal
 6 error. Specifically the ALJ failed to articulate sufficient reasons to find Ms.
 7 Facklam not credible. (Pl. Mem. at 3 (case citation omitted).) This matter now is
 8 ready for decision, and the Court rules as follows with respect to the disputed
 9 issue.¹

10 An ALJ’s assessment of pain severity and claimant credibility is entitled to
 11 “great weight.” *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989); *Nyman v.*
 12 *Heckler*, 779 F.2d 528, 531 (9th Cir. 1986). Where the claimant has produced
 13 objective medical evidence of an impairment which could reasonably be expected
 14 to produce some degree of pain and/or other symptoms, and the record is devoid of
 15 any affirmative evidence of malingering, the ALJ may reject the claimant’s
 16 testimony regarding the severity of the claimant’s pain and/or other symptoms only
 17 if the ALJ makes specific findings stating clear and convincing reasons for doing
 18 so. *See Cotton v. Bowen*, 799 F.2d 1403, 1407 (9th Cir. 1986); *Smolen v. Chater*,
 19 80 F.3d 1273, 1281 (9th Cir. 1996); *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir.
 20 1993); *Bunnell v. Sullivan*, 947 F.2d 341, 343 (9th Cir. 1991) (en banc). An ALJ
 21 may consider a variety of factors ordinarily used in assessing credibility. *See*
 22 *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002). As the Ninth Circuit
 23 stated in *Light v. Soc. Sec. Admin*, 119 F.3d 789, 792 (9th Cir. 1997), “the ALJ may
 24 consider [the claimant’s] reputation for truthfulness, inconsistencies either in [the

25
 26 ¹ The decision in this case is being made on the basis of the pleadings, the
 27 administrative record (“AR”), and the memoranda filed by the parties in support of
 28 their pleadings.

1 claimant's] testimony or between [the claimant's] testimony and his conduct, [the
2 claimant's] daily activities, [the claimant's] work record, and testimony from
3 physicians and third parties concerning the nature, severity, and effect of the
4 symptoms of which he complains."

5 Here, the ALJ provided several reasons for discounting Plaintiff's testimony.
6 One reason was the inconsistencies between Plaintiff's testimony about her daily
7 activities and what she stated to a doctor about those activities. As summarized by
8 the ALJ, Plaintiff "testified she is unable to work due to neck pain, back pain, and
9 carpal tunnel syndrome. . . . She claimed that she has pain when performing
10 activities of daily living such as sweeping, vacuuming and opening the door. She
11 contended that her symptoms are exacerbated by overuse. . . . She stated that she
12 has to force herself to get out of bed. . . . She reported that she had difficulty
13 sleeping." (AR 25.) However, during a physical consultative examination
14 performed by Dr. Glenn Kunsman, Plaintiff painted a different picture of her ability
15 to perform "activities of daily living": "[Plaintiff] denies significant impact on
16 activities of daily living. [Plaintiff] is able to complete self- care activities
17 including meals, hygiene, and housework. [Plaintiff] is able to ambulate without
18 significant limitations throughout the day. [Plaintiff] is not confined to bed, and
19 gets adequate sleep." (AR 350, noted by ALJ at AR 28.) Consideration of such
20 inconsistent statements is a common tool for evaluating credibility and provides a
21 valid reason for an adverse credibility finding. *See Thomas*, 278 F.3d at 959; *Light*
22 119 F.3d at 792. The Court finds the inconsistencies between these statements to
23 be of particular importance because they go to key aspects of what Plaintiff claims
24 she can and cannot do as a result of her pain. And while Plaintiff cites to another
25 physician report where she apparently described more significant interference with
26 her daily life (Pl. Mem. at 9, citing AR 344-45), this does not eliminate the
27 inconsistent statements to Dr. Kunsman and their impact on her credibility.

1 A second reason set out by the ALJ was the conservative treatment plaintiff
2 received. The ALJ noted that Plaintiff had received various pain medication
3 prescriptions. (AR 26.) Plaintiff, on the other hand, cites to evidence that she was
4 told surgery, epidurals and physical therapy would not help her. (AR 328.)
5 Overall, the Court finds that this reason, while potentially probative on the issue of
6 credibility (*see Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989)), is not a clear and
7 convincing reason here given the ALJ's minimal discussion of this factor and the
8 limited evidence referenced in the decision on this point. The ALJ also fails to cite
9 medical opinions that concluded Plaintiff's symptoms were out of proportion to her
10 treatment regimen, and it instead appears that the ALJ simply reached a lay
11 conclusion that the treatment was "conservative." *See generally Day v.*
12 *Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975) (ALJ is not qualified as a medical
13 expert).

14 A third reason — raised by the Commissioner as a basis for the ALJ's
15 credibility determination — is that Plaintiff was not credible in light of the opinions
16 given by medical professionals. Although the ALJ included a discussion of various
17 medical opinions in support of her RFC finding, the Court does not read that
18 discussion as presenting a sufficient ground for discounting Plaintiff's credibility.
19 The decision does not indicate how certain medical opinions lessen the credibility
20 of particular aspects of Plaintiff's testimony and thus does not provide the
21 necessary specificity for a valid basis for the credibility finding. An ALJ's findings
22 "must be sufficiently specific to allow a reviewing court to conclude the
23 adjudicator rejected the claimant's testimony on permissible grounds and did not
24 arbitrarily discredit a claimant's testimony regarding pain." *Brown-Hunter v.*
25 *Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (quoting *Bunnell*, 947 F.2d at 345-46). A
26 reviewing court should not have to speculate regarding the ALJ's grounds for
27 rejecting a claimant's subjective symptom testimony, *Bunnell*, 947 F.2d at 346, and
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1 “implicit” findings that a claimant’s testimony is not credible are insufficient.
 2 *Albalos v. Sullivan*, 907 F.2d 871, 874 (9th Cir. 1990).

3 As a final reason, the ALJ pointed out how Plaintiff’s subjective symptom
 4 testimony was not supported by the objective medical evidence of record.
 5 Although this may not be the *sole* reason to support an adverse credibility finding,
 6 “it is a factor that the ALJ can consider in [her] credibility analysis.” *Burch v.*
 7 *Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005); *see also Molina v. Astrue*, 674 F.3d
 8 1104, 1113 (9th Cir. 2012) (ALJ properly rejected claimant’s testimony in part
 9 because it was inconsistent with medical evidence in the record); *Morgan v.*
 10 *Commissioner of Social Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999) (ALJ may
 11 properly consider conflict between claimant’s testimony of subjective complaints
 12 and objective medical evidence in the record); *Tidwell v. Apfel*, 161 F.3d 599, 602
 13 (9th Cir. 1998) (ALJ may properly rely on weak objective support for the
 14 claimant’s subjective complaints); *Orteza v. Shalala*, 50 F.3d 748, 750 (9th Cir.
 15 1995) (ALJ may properly rely on lack of objective evidence to support claimant’s
 16 subjective complaints). In the present case, the ALJ’s assessment of the objective
 17 medical evidence was not error as part of the adverse credibility determination.
 18 The Court has reviewed the ALJ’s discussion of the objective evidence and finds
 19 that it is specific and supported by substantial evidence in the record.

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23 In conclusion, the Court finds that the ALJ’s adverse credibility
 24 determination set forth clear and convincing reasons and was supported by
 25 substantial evidence. Although two of the alleged reasons were insufficient, the
 26 Court has nevertheless found that Plaintiff’s inconsistent statements about her daily
 27 activities and the lack of objective medical support for her subjective symptoms are
 28 specific, clear and convincing reasons supported by substantial evidence.

1 IT THEREFORE IS ORDERED that Judgment be entered affirming the
2 decision of the Commissioner.

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4 DATED: October 12, 2016

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7 ALEXANDER F. MacKINNON
8 UNITED STATES MAGISTRATE JUDGE
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